REMARKS

Reconsideration and allowance are respectfully requested.

New claim apparatus 13 is added which does not use means plus function language and is not intended to be interpreted under 35 U.S.C. §112, sixth paragraph.

Claims 8-12 stand rejected under 35 U.S.C. §101 as allegedly being non-statutory. This rejection is respectfully traversed.

Claim 8 is amended to emphasize that the method steps are tied to particular machines including a Media Resource Function node and a User Equipment. Accordingly, the method could not be "completely performed mentally, verbally or without a machine" as asserted in the office action. Withdrawal of this rejection is requested.

Claim 9 stands rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite. This rejection is respectfully traversed.

The Examiner suggests that the term "sampling" is a "broad term" and that the specification does not describe sampling. Applicants disagree. First, the fact that a term is broad does not make that term indefinite. Second, the Examiner does not identify what about the term sampling is unclear. Sampling is a very common term in the electrical art well understood by those skilled in that art. Third, page 6, lines 8-10 described that "packet loss samples are taken periodically, occasionally triggering bandwidth adaptation if continued loss is evident." Taking packet loss samples periodically is an adequate description of sampling. Withdrawal of this rejection is requested.

All claims stand rejected under 35 U.S.C. §102 for anticipation based on Vimpari. This rejection is respectfully traversed.

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"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991). Vimpari does not satisfy this rigorous standard.

Vimpari describes processing variable-length packets and keeping the error rate of basic packets included in RTP packets communicated in a packet-switched telecommunication network at a desired level. Specifically, the number of basic packets to be included in RTP packets is changed according to the frame error rate (FER) of the last received RTP packet if it either exceeds or drops below a predetermined threshold value. See Abstract. The better the conditions on a communications connection, the more basic packets can be included in a single RTP packet. If the conditions on the communications connection become worse, then the number of basic packets to be included in a single RTP packet is reduced. See [0017].

The claimed technology is concerned with optimizing bandwidth useage on an RTP link. A packet loss rate is monitored for the link is monitored to determine whether it is unacceptably high. The sending rate is then adapted by re-packetizing media to increase the size of packets sent over the link if the rate to too high in order to reduce the packet header overhead, or to decrease the size of the packet sent over the link when the rate of packet loss is with acceptable limits to reduce the transmission delay over the link.

Claim 8, for example, recites: "as a result of said monitoring [of packet loss rate for a particular link], adapting the sending rate from at the Media Resource Function node over the link to the User Equipment by re-packetising media, received at the Media Resource Function

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node from third party nodes, to either <u>increase the size of packets sent over the link when the rate of packet loss is unacceptably high</u>, thereby reducing packet header overhead and reducing bandwidth usage on the link; or to <u>decrease the size of packets sent over the link when the rate of packet loss is within acceptable limits</u>, thereby reducing the transmission delay over the link."

Vimpari teaches just the opposite. Quoting from [0017]: "The idea of the invention is basically as follows: A hardware arrangement according to the invention makes use of adaptively varying packet lengths on the RTP level. The <u>better the conditions</u> on a communications connection, the <u>greater the number of data blocks that can be attached to a single RTP packet</u> to be transferred. <u>If, on the other hand, the conditions on the communications connection become worse, the number of data blocks, hereinafter called basic packets, to be included in a single RTP packet is reduced</u>...Conversely, in good conditions it is possible to benefit from the decrease of the average proportion of header data per one basic packet in the longer RTP packets and to transfer more user data per unit time on the same physical transfer channel."

The Examiner argues that even though Vimpari decreases packet size when the rate of packet loss is high—in contrast to what is claimed—the claimed different approach is simply one of "different options of a configuration option" that may be selected. This argument is misplaced. First, the rejection is an anticipation rejection, and as the case law cited above explains, every feature recited in the claim must be disclosed by Vimpari. By the Examiner's own wording, it is plain that Vimpari does not teach all the claim features. Second, the Examiner cites no legal authority for the proposition that "selecting different options of a configuration option does not constitute a new invention." This is not the standard for obviousness set forth in

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35 U.S.C. §103 and explained in the seminal Supreme Court decisions on obviousness: Graham v. Deere and KSR.

Third, Vimpari's disclosure does not set forth different options other than those described in [0017] which teach away from what is claimed in this application. "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). Teaching away was one indicia of nonobviousness recognized explicitly by the Supreme Court in its *KSR* decision.

Fourth, there is a fundamental difference between the claimed approach and that in Vimpari. Vimpari focuses on an individual call connection rather than specific links where each call connection has an uplink and a downlink. See the first paragraph in the detailed description of the instant specification. Consequently, Vimpari is not concerned with reducing bandwidth useage over the radio interface, but rather with reducing delays for a particular call using that radio interface. Although Vimpari's approach may improve service for a one user, it will also detrimentally impact the service other active users who are communicating with the same MRF node. On the other hand, the claimed technology reduces overall bandwidth useage which increases the radio bandwidth available for other users.
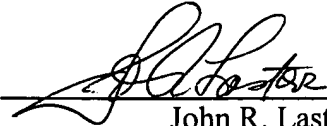
The application is in condition for allowance. An early notice to that effect is requested.

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Respectfully submitted,

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